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AD

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Bearings Limited

Serial No. 76573265

Myron Amer of Myron Amer, P.C. for Bearings Limited.

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(M.L. Hershkowitz, Managing Attorney).

Before Hairston, Bucher and Drost, Administrative Trademark
Judges.

Opinion by Drost, Administrative Trademark Judge:

On February 2, 2004, Bearings Limited (applicant)
applied to register the mark BL on the Principal Register
for goods ultimately identified as "machine part, namely, a
ball bearing used as part of a machine on which another
part turns or slides" in Class 7.¹

¹ Serial No. 76573265. The application contained an assertion of
a date of first use and a date of first use in commerce of
February 11, 1985.

The examining attorney refused to register the mark under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), because of a registration for the mark BL, as shown below, for "metal bolts, metal nuts and metal screws" in Class 6.²



The examining attorney argues that the marks' literal portions are identical and that the "third party registrations in evidence clearly show that the subject goods emanate from a common source." Brief at 6. Applicant argues that the "examining attorney's reliance on the fact that the marks are identical does not demonstrate that confusion is likely in that BL is a weak source-identifier, the goods in issue are radically different and it has not been established in the record on appeal that they travel through the same channels of trade." After the examining attorney made the refusal final, this appeal followed.

In a case involving a refusal under Section 2(d), we analyze the facts as they relate to the relevant factors

² Registration No. 2,656,552 issued December 3, 2002.

set out in In re Majestic Distilling Co., 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003). See also In re E. I. du Pont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973); Recot, Inc. v. Becton, 214 F.3d 1322, 54 USPQ2d 1894, 1896 (Fed. Cir. 2000).

In this case, applicant has applied to register the mark BL. Registrant's mark is for the same letters in stylized form. As discussed below, these marks are similar in sound, appearance, meaning, and commercial impression. Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772, 396 F.3d 1369, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005). They obviously would be pronounced identically and both would have the same meaning, the letters BL.

Regarding the appearance of the marks, they are identical to the extent that they are for the same letters BL. Registrant adds a slight stylization.



Applicant's mark apparently is a typed or standard character drawing that does not claim any specific style. As such, there would not be any legally significant

differences between the marks because by "presenting its mark merely in a typed drawing, a *difference* cannot legally be asserted by that party." Squirtco v. Tomy Corp., 697 F.2d 1038, 216 USPQ 937, 939 (Fed. Cir. 1983). Therefore, the appearance of the marks would be legally identical.³ Similarly, the commercial impression of the marks, if not identical, would certainly be very similar. Indeed, except for perhaps a slight difference in stylization, we can discern no differences in the marks' commercial impressions.

Applicant argues that the letters BL are in "common use." Brief at 5. Applicant has submitted nine registrations with its appeal brief to support this argument. The examining attorney objects to this evidence

³ Perhaps because of some ambiguous language in the application, the Office database indicates that applicant's mark is in stylized form as shown below.

BL

We note that applicant does not argue any difference based on stylization of the marks and applicant's mark as shown above is in a different style than the mark on the specimens of record. Therefore, it is apparent that applicant did not apply for registration of its mark in stylized form. We add that even if applicant's mark is considered to be in the above stylization, the stylization is very similar to registrant's stylization, and it would not serve to significantly distinguish these BL marks.

as untimely. The "record in the application should be complete prior to the filing of an appeal." 37 CFR § 2.142(d).⁴ Inasmuch as applicant did not submit these registrations until it filed its appeal brief, this evidence is not properly of record. However, we add that registrations are not evidence of use and they cannot be used to support the registrations of another confusingly similar mark. In re J.M. Originals Inc., 6 USPQ2d 1393, 1394 (TTAB 1987). Also, we agree with the examining attorney who points out that these registrations "contain totally unrelated goods." Brief at 7. Even a cursory look at the goods in the registrations reveals goods such as handbags, beer, chemicals, jewelry, fans, and goggles that are significantly different from the bearings, nuts, bolts, and screws at issue in this appeal.⁵ Therefore, even if these registrations were probably of record that would not lead us to conclude that BL is in "common use" as applicant argues.

⁴ Applicant could have submitted a request for reconsideration to which "normally the examiner will reply ... before the end of the six-month period if the request is filed within three months after the date of the final action." 37 CFR § 2.64(b).

⁵ The list also included the cited registration and one application for wedding rings. Obviously, the cited registration is not evidence that the mark BL is in common use, and the application, in addition to being of little probative value, is also for distinctly different goods. Zappia-Paradiso, S.A. v. Cojeva Inc., 144 USPQ 101, 102 n.4 (TTAB 1964).

When we view the marks in their entirety, we find that they are very similar inasmuch as they are for the same letters and any difference in stylization would be minimal.

The next factor we consider is whether the goods of applicant and registrant are related. As noted above the marks are for the identical letters BL. In a similar case, the Federal Circuit held that "[w]ithout doubt the word portions of the two marks are identical, have the same connotation, and give the same commercial impression. The identity of words, connotation, and commercial impression weighs heavily against the applicant." In re Shell Oil Co., 992 F.2d 1204, 26 USPQ2d 1687, 1688 (Fed. Cir. 1993). See also Amcor, Inc. v. Amcor Industries, Inc., 210 USPQ 70, 78 (TTAB 1981) (When both parties are using the identical designation, "the relationship between the goods on which the parties use their marks need not be as great or as close as in the situation where the marks are not identical or strikingly similar").

Applicant's goods are machine parts, namely, ball bearings used as part of a machine on which another part turns or slides. Registrant's goods are metal bolts, metal nuts, and metal screws. The examining attorney and applicant disagree as to whether these goods are related.

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The examining attorney submitted numerous registrations to suggest that the goods are related. Some of these registrations include:

No. 1,190,381 for "metal pins, nuts, bolts, washers, springs, and trusses" and "bearings, wheels and axles for agricultural machines"

No. 1,399,080 for "parts made primarily of metal consisting of: locks, keys, bolts, screws, nuts" and "ball bearings"

No. 1,717,459 for "metal mechanical components; namely ... nuts, screws" and "machine components; namely, gears, ball bearings"

No. 1,711,149 for "metal bolts for storage elevators" and "storage elevator parts; namely, elevator buckets, drag flights and bearings"

No. 2,033,347 for "parts for machinery, namely, metal bearings for machines to reduce friction and allow movement between metal pieces" and "goods of common metal, namely ... connecting bolts ... sheet metal screws, washers, and nuts"

No. 2,282,654 for "metal machine parts, namely, hex headbolts, machine bolts, U-bolts" and "machine parts for agricultural tilling machines such as planters and cultivators, namely ... bearings ... grain drill bearings"

No. 2,837,549 for "steam turbine parts, namely ... ball bearings" and "nuts, bolts, screws"

No. 2,574,971 for "machine parts, namely, bearings and bushings" and "parts for outdoor power equipment, namely ... nuts, bolts"

No. 2,312,075 for "metal hardware, namely, nuts, bolts, cotter pins and screws" and "parts for agricultural equipment, namely, ... ball bearings"

No. 2,830,118 for "metal fasteners, namely, bolts, screws, and nuts" and "machine parts, namely, positive displacement pumps, bearings and bushings"

These registrations provide some support for the examining attorney's argument that the goods of applicant and registrant are related. See In re Mucky Duck Mustard Co., 6 USPQ2d 1467, 1470 n.6 (TTAB 1988) (Although third-party registrations "are not evidence that the marks shown therein are in use on a commercial scale or that the public is familiar with them, [they] may have some probative value to the extent that they may serve to suggest that such goods or services are the type which may emanate from a single source"). See also In re Albert Trostel & Sons Co., 29 USPQ2d 1783, 1786 (TTAB 1993).

The evidence also includes further support for the argument that ball bearings and screws, nuts, and/or bolts are related. See Phoenix New Times, September 20, 2001 ("But when you really need honest-to-God hardware - nuts, bolts, machine screws, ball bearings..."); *Business Wire* dated October 14, 2002 ("The library features standard parts that customers use most - screws and bolts, nuts, washers, adjusting rings, bearings").⁶ Inasmuch as applicant's specific ball bearings would often be included within the more general description of ball bearings in the third-party registrations, there is no reason to hold that

⁶ We can consider news wire articles. In re Cell Therapeutics Inc., 67 USPQ2d 1795, 1798 (TTAB 2003).

these registrations do not suggest that applicant's ball bearings are related to registrant's goods.

When we consider whether goods are related, it "has often been said that goods or services need not be identical or even competitive in order to support a finding of likelihood of confusion. Rather, it is enough that goods or services are related in some manner or that circumstances surrounding their marketing are such that they would be likely to be seen by the same persons under circumstances which could give rise, because of the marks used thereon, to a mistaken belief that they originate from or are in some way associated with the same producer or that there is an association between the producers of each parties' goods or services." In re Melville Corp., 18 USPQ2d 1386, 1388 (TTAB 1991). See also Time Warner Entertainment Co. v. Jones, 65 USPQ2d 1650, 1661 (TTAB 2002). Furthermore, "even when goods or services are not competitive or intrinsically related, the use of identical marks can lead to an assumption that there is a common source." Shell Oil, 26 USPQ2d at 1689.

The evidence shows ball bearings and even specifically ball bearings for machine parts have been registered along with nuts, bolts, and/or screws in a common registration. Purchasers repairing or maintaining various types of

machines would likely be in the market for ball bearings and screws, nuts, and/or bolts. Furthermore, absent restrictions in the identification, we must assume that the goods travel in "the normal and usual channels of trade and methods of distribution." CBS Inc. v. Morrow, 708 F.2d 1579, 218 USPQ 198, 199 (Fed. Cir. 1983). In this case, the evidence supports a conclusion that the channels of trade for these goods at least overlap. Thus, applicant's and registrant's goods are related.

When we compare the marks and the goods as well as all the evidence of record, we conclude that confusion is likely in this case. The marks are for identical letters and applicant's ball bearings and registrant's nuts, bolts, and screws are related. When marks as similar as applicant's and registrant's are used on these goods, consumers are likely to believe that there is some relationship or association as to the source of the goods.

Decision: The refusal to register applicant's mark under Section 2(d) is affirmed.